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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/580,402

08/11/2006

Sally Leivesley

613-106

2090

23117

7590

03/05/2010

NIXON & VANDERHYE, PC  
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ARLINGTON, VA 22203

EXAMINER

SINGH-PANDEY, ARTI R

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

03/05/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/580,402	<b>Applicant(s)</b> LEIVESLEY, SALLY	
	<b>Examiner</b> Arti Singh-Pandey	<b>Art Unit</b> 1794	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 November 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>10.22.09 and 09.15.09</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's amendment and accompanying remarks filed 11/21/09 have been fully considered and entered. Applicant's arguments with respect to claims 1-8 and 11 have been considered but are moot in view of the new ground(s) of rejection. There were no amendments to the claims. The proper claims have been rejected below in a new art rejection provided from a reference submitted by Applicant. All previously applied rejections are withdrawn except for the Double Patenting rejection, as the Terminal Disclaimer was disqualified.

### **2. *Terminal Disclaimer***

The terminal disclaimer filed on 10/19/09 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 10/579923 has been reviewed and is found to be unacceptable. Specifically, Commonly owned is needed after the enforceable clause the words "legal title" do not include common ownership as to equitable title, see 37 CFR 1.321 (c)(3).

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-8 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by the Abstract of DE 3506132 (A1).

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DE 3506132 discloses a solid fire protection composition for the production of fire protection elements and for coating components and building parts, which is made using water glass and an organic binder and has a solid consistency. The water glass is formulated into a hydrogel comprising from 1.00 to 12% by weight of  $\text{SiO}_2$ , from 0.25 to 6% by weight of  $\text{Na}_2\text{O}$  from 0.25 to 14% by weight of reaction products of an organic and/or inorganic acid which reacts to form a gel with sodium water glass, and remainder: water. A preservative is mixed with the water before the hydrogel formation. The hydrogel is solidified by means of at least one organic binder to give the transparent solid fire protection composition.

### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arti Singh-Pandey whose telephone number is 571-272-1483. The examiner can normally be reached on M-R 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Tarazano can be reached on 571-272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Arti Singh-Pandey/  
Primary Examiner  
Art Unit 1794

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